

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.801 and 724.21A, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 10, “Contested Case Hearings,” and Chapter 11, “Procedure for Contested Cases Involving Permits to Carry Weapons and Acquire Firearms,” Iowa Administrative Code.

The proposed amendments are technical changes to update filing and service rules for contested case proceedings to permit appropriate use of e-mail and fax transmission of documents to the Administrative Hearings Division and other parties and to ensure consistency between the general rules and those involving permits to carry weapons or acquire firearms. The proposed amendments also clarify that the rehearing procedure required by Iowa Code section 17A.16(2) is applicable to cases involving permits to carry weapons or acquire firearms under Iowa Code section 724.21A.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 21, 2015. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 10A.801, 17A.16, and 724.21A.

The following amendments are proposed.

ITEM 1. Amend rule 481—10.12(17A) as follows:

481—10.12(17A) Service and filing of pleadings and other papers documents.

10.12(1) *When service is required.* Except where otherwise specifically authorized by law, every pleading, motion, ~~or other document or other paper~~ filed in the contested case proceeding and every ~~paper document~~ relating to discovery in the proceeding shall be served upon each of the parties to the proceeding, including the originating agency. Except for the notice of the hearing and an application for rehearing as provided in Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

10.12(2) *Methods of performing service.* Service upon a party represented in the contested case proceeding by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by ~~delivery or by delivering~~, mailing, or transmitting by facsimile (fax) or by electronic mail (e-mail) a copy to the ~~person’s party or attorney at the party’s or attorney’s last-known mailing address, fax number, or e-mail address.~~ Service by first-class mail is ~~rebuttably presumed to be complete upon mailing,~~ except where otherwise specifically provided by statute, rule or order. Service by fax or electronic mail is complete upon transmission unless the party making service learns that the attempted service did not reach the person to be served.

10.12(3) *Filing with the division.* After a matter has been assigned to the division, and until a proposed decision is issued, ~~documents every pleading, motion, or other document~~ shall be filed with the division, rather than the originating agency. ~~All papers filed after the notice is issued documents~~ that are required to be served upon a party shall be filed simultaneously with the division.

a. Except where otherwise provided by law, a document is deemed filed with the division at the time it is:

(1) ~~Delivered to the division of appeals and fair hearings, department of inspections and appeals at the Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa, and date-stamped received;~~

(2) Delivered to an established courier service for immediate delivery to the division;

(3) Mailed to the division by first-class mail or by state interoffice mail so long as there is adequate proof of mailing; or

(4) ~~Sent~~ Transmitted by facsimile transmission (fax) to (515)281-4477, by electronic mail (e-mail) to adminhearings@dia.iowa.gov, or by other electronic means approved by the division, as provided in subrule 10.12(3), paragraph "b."

b. All documents filed with the division pursuant to these rules, except a person's request or demand for a contested case proceeding, (see Iowa Code subsection 17A.12(9)), ~~may be filed by facsimile transmission (fax), electronic mail (e-mail), or by other electronic means approved by the division. A copy shall be filed for each case involved.~~ A document filed by fax, e-mail, or other approved electronic means is presumed to be an accurate reproduction of the original. If a document filed by fax, e-mail, or other approved electronic means is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax, e-mail, or other approved electronic means shall be the date the document is received by the division. The division will not provide a mailed file-stamped copy of documents filed by fax, e-mail, or other approved electronic means.

10.12(4) Proof of mailing. Adequate proof of mailing includes the following:

- a. A legible United States postal service postmark on the envelope;
- b. A certificate of service;
- c. A notarized affidavit; or
- d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Inspections and Appeals, Appeals Administrative Hearings Division, Lucas Wallace State Office Building, 2nd Third Floor, 502 East Ninth Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed) or (state interoffice mail).

(date)

(signature)

ITEM 2. Rescind rule 481—11.6(17A) and adopt the following **new** rule in lieu thereof:

481—11.6(17A) Service and filing of documents.

11.6(1) When service is required. Every pleading, motion, or other document filed in the contested case proceeding shall be served on each of the parties to the proceeding, including the agency. Except for an application for rehearing as provided in rule 481—11.14(17A) and Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

11.6(2) Methods of performing service. Service upon a party represented in the contested case proceeding by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivering, mailing, or transmitting by facsimile (fax) or by electronic mail (e-mail) a copy to the party or attorney at the party's or attorney's last-known mailing address, fax number, or e-mail address. Service by first-class mail is complete upon mailing. Service by fax or electronic mail is complete upon transmission unless the party making service learns that the attempted service did not reach the person to be served.

11.6(3) Filing with the division. Every pleading, motion, or other document in the contested case proceeding shall be filed with the division. All documents that are required to be served upon a party shall be filed simultaneously with the division.

a. Except where otherwise provided by law, a document is deemed filed with the division at the time it is:

(1) Delivered to the division at the Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa, and date-stamped received;

(2) Delivered to an established courier service for immediate delivery to the division;

(3) Mailed to the division by first-class mail or by state interoffice mail so long as there is adequate proof of mailing; or

(4) Transmitted by facsimile (fax) to (515)281-4477, by electronic mail (e-mail) to adminhearings@dia.iowa.gov, or by other electronic means approved by the division, as provided in subrule 11.6(3), paragraph “b.”

b. All documents filed with the division pursuant to these rules, except a person’s written appeal pursuant to rule 481—11.2(724), may be filed by facsimile (fax), electronic mail (e-mail), or other electronic means approved by the division. A document filed by fax, e-mail, or other approved electronic means is presumed to be an accurate reproduction of the original. If a document filed by fax, e-mail, or other approved electronic means is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax, e-mail, or other approved electronic means shall be the date the document is received by the division. The division will not provide a mailed file-stamped copy of documents filed by fax, e-mail, or other approved electronic means.

11.6(4) Proof of mailing. Adequate proof of mailing includes the following:

a. A legible United States postal service postmark on the envelope;

b. A certificate of service;

c. A notarized affidavit; or

d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Inspections and Appeals, Administrative Hearings Division, Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.

(date)

(signature)

This rule is intended to implement Iowa Code section 724.21A.

ITEM 3. Amend rule 481—11.7(17A) as follows:

481—11.7(17A) Witness lists and exhibits. No later than five days before the hearing, a party shall serve on all parties and ~~the administrative law judge~~ shall file with the division a witness list and a copy of any exhibit(s) the party intends to introduce into evidence during the contested case proceeding. If a party fails to serve on all parties and ~~the administrative law judge~~ file with the division a witness list or any exhibit five days before the hearing, the party may be precluded from calling the witness at hearing or introducing the exhibit(s) into the record at hearing.

ITEM 4. Adopt the following new rule 481—11.14(17A):

481—11.14(17A) Rehearing. An applicant, permittee, or agency aggrieved by an administrative law judge’s final decision rescinding or sustaining the agency’s denial, suspension, or revocation may request rehearing. A request for rehearing shall be made by filing an application for rehearing with the division within 20 days of the date of the administrative law judge’s final decision and must state the specific grounds for the rehearing and the relief sought. An application for rehearing shall be deemed to have been denied unless the administrative law judge grants the application within 20 days after its filing. A request for rehearing is not necessary to exhaust administrative remedies.

This rule is intended to implement Iowa Code sections 724.21A and 17A.16.